

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRELL K. ISCH,
Plaintiff,

No. 1:09-cv-415

-v-

HONORABLE PAUL L. MALONEY

MEIJER, INC.,
Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

Plaintiff Isch filed a complaint on May 7, 2009. He was granted leave to proceed *in forma pauperis* on May 8, 2009. A summons was given the United States Marshall for service on Defendant Meijer, Inc., pursuant to FED. R. CIV. P. 4(c)(3) and 28 U.S.C. § 1915. On June 22, 2009, Defendant Meijer, Inc. filed a motion (Dkt. No. 7) to compel arbitration and for summary judgment. On June 24, 2009, Plaintiff Isch filed a "motion for civil action," in which he requests entry of default against Defendant Meijer for failing to answer the complaint within 20 days after service of summons.

Plaintiff Isch is not entitled to entry of default. First, under the order (Dkt. No. 3 - 5/8/09 IFP Order) to proceed *in forma pauperis*, Plaintiff must serve a copy of all pleadings submitted to the Court on Defendant or Defendant's attorney. The order requires Plaintiff to "include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to defendant or the attorney(s)." (5/8/09 IFP Order.) Plaintiff has not included a certificate of service with this motion. Second, a party moving for entry of default must show the party against whom default is sought has failed to plead or otherwise defend "by affidavit or otherwise." FED. R. CIV. P. 55(a). Plaintiff has not submitted an affidavit or

otherwise established Defendant has failed to plead or defend within 20 days of service. Plaintiff's statement to that effect contained in his motion, by itself, is insufficient. Finally, no proof of service of the summons and complaint on Defendant has been filed with the Court. *See* FED. R. CIV. P. 4(l)(1) ("unless service is waived, proof of service must be made to the court"). From the record before this Court, there is no way to determine if Defendant has ever been served.

For these reasons, Plaintiff Isch's motion (Dkt. No. 8) for entry of default is **DENIED WITHOUT PREJUDICE. IT IS SO ORDERED.**

Date: June 29, 2009

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge